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2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT TACOMA

5
6 WILD BAINBRIDGE, a non-profit
7 corporation,

8 Plaintiff,

9 v.

10 MAINLANDER SERVICES
11 CORPORATION, an Oregon corporation;
12 OIEN CONSTRUCTION, INC., a Washington
13 corporation; UNITED STATES ARMY
14 CORPS OF ENGINEERS, a federal agency;
15 COLONEL MICHAEL McCORMICK, Seattle
16 District of Army Corps of Engineers; and JANE
17 and JOHN DOES 1-10,

18 Defendants.

19 Case No. C04-5054FDB

20 ORDER SETTING BRIEFING
21 SCHEDULES AND DIRECTING
22 ENTRY OF SCHEDULING ORDER

23 In response to the Court's earlier order requiring a Joint Status Report to explain the current
24 status regarding settlement negotiations, the parties filed a JSR and proposed schedule. They agree
25 that for the time being, settlement possibilities have been exhausted.

26 The parties also agree that the "citizens' suit" under the Clean Water Act alleging illegal
27 filling of wetlands by defendants Mainlander and Oien will require trial if not resolved by dispositive
28 motions. The parties agree on a scheduling order for the Clean Water Act claims against the private
29 defendants.

30 The parties also agree that the claims exclusively against the federal defendants under the
31 Administrative Procedures Act for judicial review of a Clean Water Act permit decision made by the
32 Corps that authorized Mainlander and Oien to discharge fill material into certain wetlands are
33 appropriately resolved through summary judgment briefing and are limited to the agency's
34 administrative record using the standards of review in the Administrative Procedures Act.

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36 ORDER - 1

1 There is a dispute among the parties as to the appropriate schedule for the Administrative
2 Procedures Act claims against the Corps. Plaintiff, with the burden of proof on the challenges it
3 raises to the Corps' permit decision contends it should be allowed to file the opening and closing
4 briefs. The federal defendants agree that Plaintiff should file the opening brief, but that briefing
5 should continue on staggered summary judgment cross-motions, with plaintiff filing the opening
6 motion, followed by the federal defendants' cross-motion.

7 The Court prefers the briefing schedule for cross-motions on summary judgment as set forth
8 in Part III B "Corps' Proposal" of the JSR. The Court will enter a scheduling order setting the
9 action dates leading to trial.

10 NOW, THEREFORE, IT IS ORDERED:

- 11 1. The Court adopts that part of the Joint Status Report Part II for Clean Water Act
12 claims against the private defendants, and the Clerk of the Court shall insert this Part
13 II briefing schedule into the Scheduling Order Setting Trial and Pretrial Dates;
- 14 2. The Court adopts that part of the Joint Status Report Part III.B. "Corps" Proposal"
15 as the briefing schedule for cross-motions for summary judgment on the APA claims
16 against the Army Corps of Engineers, and the Clerk of the Court shall insert this Part
17 III.B. briefing schedule into the Scheduling Order Setting Trial and Pretrial Dates.

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19 DATED this 11th day of May, 2007.

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21 FRANKLIN D. BURGESS
22 UNITED STATES DISTRICT JUDGE
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26 ORDER - 2